IN THE HIGH COURT OF BOMBAY AT GOA.

EXCISE APPEAL NOS.5/2006, 6 of 2006 and 7 of 2006.

EXCISE APPEAL NOS. 5 and 6 OF 2006

The Commissioner of Central Excise, ICE House, Patto, Panaji-Goa 403 001 .... Appellant.

V/s

M/s. Kundil Alloys Pvt. Ltd. Plot No.A-1, Kundaim Industrial Estate, Kundaim-Goa. .... Respondent.

WITH

EXCISE APPEAL NO. 7 OF 2006

The Commissioner of Central Excise, Ice House, Patto, Panaji, Goa 403 001 .... Appellant.

V/s

M/s Shri Ambay Forging Pvt. Ltd. (a Company incorporatted under the Company Act, 1956) having in Registered office at 505 A, 5th Floor Dempo Trade Centre, Patto, Panaji – Goa. .... Respondent.

Ms. A. Desai, Advocate for the appellant.

Mr. Rajiva Shrivastava, Advocate for the respondent.

Coram:- R. D. DHANUKA & Prithviraj K. Chavan,JJ.
Date:- 14th March, 2019.

ORAL JUDGMENT (Per R. D. Dhanuka, J.)

Heard Ms. A. Desai, learned Counsel for the appellant and Mr. Rajiva Shrivastava, learned Counsel for the respondent.

2. By order dated 31.7.2006, these three appeals were admitted on the following substantial question of law:-

> "Whether the omission of section 3A of the Central Excise Act, 1944 by section 121 of the Finance Act, 2001, without any savings clause would affect proceedings in respect of which action had already been initiated?”

3. Customs, Excise and Service Tax Appellate Tribunal(CESTAT) disposed of all these three appeals filed by the Assessee thereby allowing those appeals and set aside the demand together with interest and the penalty levied by the appellant.

4. The learned Counsel for the appellant invited our attention

to the judgment of Hon'ble Supreme Court in case of ***M/s Shree Bhagwati Steel Rolling Mills Vs. Commissioner of Central Excise and another(2015 326 E.LT.209(S.C.)*** and the ***judgment of this Court delivered on 03.01.2019 in Excise Appeal No. 3 of 2007 and 4 of 2007 in the case of Commissioner of Customs and Central Excise Vs M/s Shivam Isapat(P) Ltd.***

5. The learned Counsel for both the parties are ad-idem that in so far as substantial question of law framed by this Court is concerned, the said question is concluded by the judgment of this Court in the case of ***Commissioner of Customs and Central Excise (supra)*** and accordingly the impugned order passed by the CESTAT can be set aside and the appeals preferred by Assessee can be restored to the file of the CESTAT with a direction to dispose of these appeals on its own merits and in accordance with law. Statements made by learned Counsel are accepted. Accordingly, we pass the following order:-

i. Excise Appeal Nos.5/2006, 6/2006 and 7/2006 filed by the Revenue are allowed.

ii. The impugned order dated 24.11.2005 which is subject matter of Excise appeal No.5/2006, impugned order dated 24.11.2005 which is subject matter of Excise Appeal No.6/2006 and impugned order dated 6.7.2006 which is subject matter of Excise Appeal No.7/2006 are quashed and set aside. Respondents/Assessee appeal Nos.E/1760/05-Mum, E/3920/99 and E-2246/03 are restored to the file of CESTAT.

iii. CESTAT is directed to dispose of all these appeals on its own merits and in accordance with law.

iv. All contentions of the parties except contention based upon the omission of Section 3A of the said Act are left open.

vi. Aforesaid appeals are disposed of in the aforesaid terms. There shall be no order as to costs.

PRITHVIRAJ K. CHAVAN, J. **R. D. DHANUKA, J.**